Calendar No. 637

98TH CONGRESS, 1st Session | SENATE | REPORT No. 98-344

TRANSFERRING RESPONSIBILITY FOR FURNISHING CERTIFIED COPIES OF MILLER ACT PAYMENT BONDS FROM THE COMPTROLLER GENERAL TO THE OFFICER THAT AWARDED THE CONTRACT

DECEMBER 14, 1983.—Ordered to be printed
Filed under authority of the order of the Senate of November 18 (legislative day, November 14), 1983

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 596]

The Committee on the Judiciary, to which was referred the bill (H.R. 596) transferring responsibility for furnishing certified copies of Miller Act payment bonds from the Comptroller General to the officer that awarded the contract for which the bond was given, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to amend Section 3 of the Miller Act to provide that the department secretary or agency head of a contracting agency is to have the responsibility for providing certified copies of bonds required under that Act.

STATEMENT

The bill, H.R. 596, was introduced as recommended by the Comptroller General to the Committee on the Judiciary in a letter dated April 22, 1978.

As was stated in the recommendation of the Comptroller General, the Miller Act establishes performance and payment bonding requirements for most Federal construction contracts. Section 3 of the Act requires the Comptroller General to furnish a certified copy of a bond and the contract for which it was given to any person who submits an affidavit that (1) he has supplied labor or materials for the construc-

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tion, alteration, or repair of any public buildings or public work of the United States, and payment therefor has not been made; or, that (2) he is being sued on a bond.

Prior to an amendment in 1959, the Comptroller General had the responsibility for fixing dates on which the period of limitation for filing suits against Miller Act payment bonds commenced to run. In 1959 the Act was amended to eliminate this function on the part of the Comptroller General. The amendment, which was made on August 4, 1959 by Public Law 86–135, provided that suit must be commenced within one year after the date on which the last labor was performed or material was supplied by the person initiating the lawsuit.

The amendment provided for in this bill would relieve the Comptroller General of the duty of furnishing certified copies of bonds and contracts. This was a function which actually was related to the duties of the Comptroller General prior to 1959 when the General Accounting Office was required to determine and certify the final settlement date of contracts. Since the General Accounting Office is presently not so involved, it must obtain the copies of the original bonds and contracts from the contracting department or agency when a subcontractor or materialman requests certified copies of those documents under the law. The committee agrees that a more logical and expeditious way of handling such requests would be to require that the agency that awards the contracts should supply the copy of the bond and the contract. As recommended by the Comptroller General, this merely requires that the words "department secretary or agency head of the contracting agency" be substituted for "Comptroller General" in the first and second sentences of Section 3 of the Miller Act.

The House Committee agreed with the change recommended by the Comptroller General and reported the bill favorably on April 6, 1983. The House considered and passed the measure on May 3 and sent it on to the Senate where it was referred to the Committee on May 5, 1983. The bill was approved favorably for full committee consideration by the Subcommittee on Administrative Practice and Procedure on September 22, 1983. The measure was considered by the full Committee at the November 10, 1983 business meeting and ordered favorably reported, without amendment by voice vote.

Conclusion

The committee agrees that the change recommended by the Comptroller General should be made to the Miller Act and recommends that the bill be considered favorably.

Regulatory Impact Statement

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, it is hereby stated that the bill will have no additional direct regulatory impact. After due consideration, the committee has determined that the changes in existing law contained in this bill will not increase or diminish any present regulatory responsibility of the U.S. Department of Justice or any other Department which exercises a law enforcement responsibility.

Changes in Existing Law Made by H.R. 596 as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be deleted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Section 3 of the Act of August 24, 1935 (49 Stat. 794; 40 U.S.C. 270c), as Amended by the Act of August 4, 1959 (73 Stat. 279; 40 U.S.C. 270c)

§ 270c. Right of person furnishing labor or material to copy of bond

The [Comptroller General] *department secretary or agency head of the contracting agency* is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the [Comptroller General] *department secretary or agency head of the contracting agency* fixes to cover the cost of preparation thereof.

Cost Estimate

In accordance with section 252(a) of the Legislative Reorganization Act, 2 U.S.C. 190(j), the committee estimates that there will be no significant costs or savings to the Federal Government and adopts the cost estimate prepared by the Congressional Budget Office as follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., November 14, 1983.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 596, an act transferring responsibility for furnishing certified copies of Miller Act payment bonds from the Comptroller General to the officer awarding a contract for which the bond was given, as ordered reported by the Senate Committee on the Judiciary, November 10, 1983.

We expect that no additional costs would be incurred by the federal, state, or local governments as a result of enactment of this legislation.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner.

APPENDIX

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 13, 1978.

A-54197.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: The purpose of this letter is to recommend an amendment to legislation affecting the responsibilities of the General Accounting Office. This recommendation is identical to one we suggested to your Committee by letter dated April 22, 1976.

We recommend that the Act approved August 24, 1935 (49 Stat. 793, 40 U.S.C. 270a–c), as amended by the Act approved August 4, 1959 (73 Stat. 279, 49 U.S.C. 270a–c), popularly known as the Miller Act, be amended to transfer the responsibility to furnish certified copies of payment bonds from the Comptroller General to the head of the agency that awarded the contract.

The Miller Act establishes performance and payment bonding requirements for most Federal construction contracts. Section 3 of the Act requires the Comptroller General to furnish a certified copy of a bond and the contract for which it was given to any person who submits an affidavit that (1) he has supplied labor or materials for the construction, alteration, or repair of any public buildings or public work of the United States, and payment therefor has not been made; or, that (2) he is being sued on a bond.

Under the present law, GAO must first obtain the original bonds and contracts from the contracting agency in order to furnish the requestor with certified copies of these documents. We believe that the transfer of the duty to furnish such copies from the General Accounting Office to the agency that awarded the contract will result in more expeditious processing of requests for such copies.

In addition, the Act was amended in 1959 to eliminate the Comptroller General's responsibility for fixing dates on which the period of limitation for filing suits against Miller Act payment bonds commences to run. This amendment provided that suit must be commenced within 1 year after the date on which the last of the labor was performed or material was supplied by the person initiating the lawsuit. (73 Stat. 279) Since the Miller Act no longer requires the Comptroller General to determine and certify the final settlement date of contracts, we recommend that the Comptroller General be relieved of the concomitant duty of furnishing certified copies of bonds and contracts.

Therefore, our recommendation is that the language of the first sentence in section 3 of the Miller Act of August 24, 1935 (49 Stat. 794), as amended by the Act of August 4, 1959 (73 Stat. 279), reading "The Comptroller General" should be amended to read "The department secretary or agency head of the contracting agency." In addition, the second sentence in section 3 reading "Comptroller General" should be amended to read "department secretary or agency head of the contracting agency." Suggested language for a bill to accomplish the necessary changes is enclosed.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Enclosure.

A BILL To transfer responsibility for furnishing certified copies of Miller Act Payment Bonds from the Comptroller General to the head of the agency that awarded the contract for which the bond was given

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 3 of the Act of August 24, 1935 (49 Stat. 794, 40 U.S.C. 270c), as amended by the Act of August 4, 1959 (73 Stat. 279, 40 U.S.C. 270c), is amended by striking out "Comptroller General" and inserting in lieu thereof "department secretary or agency head of the contracting agency." The second sentence of section 3 of the Act is amended by striking out "Comptroller General" and inserting in lieu thereof "department secretary or agency head of the contracting agency."

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 17, 1979.

B–195179.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: This is in reference to H.R. 236, 96th Cong., 1st Sess., which proposes to amend the Miller Act (73 Stat. 279, 40 U.S.C. § 270a–c (1976).

The bill would transfer the responsibility for furnishing certified copies of the Miller Act bonds from the Comptroller General to the department secretary or agency head that awarded the contract for which the bond was given.

The Miller Act establishes performance and payment bonding requirements for most Federal construction contracts. Section 3 of the act requires the Comptroller General to furnish a certified copy of a bond and the contract for which it was given to any person who submits an affidavit that (1) he has supplied labor or materials for the construction, alteration or repair of any public buildings or public work of the United States, and payment therefor has not been made; or, that (2) he is being sued on a bond.

Under the present law, the General Accounting Office (GAO) must first obtain the original bonds and contracts from the contracting agency in order to furnish the requester with certified copies of these

documents. We believe that the transfer of the duty to furnish such copies from the GAO to the agency that awarded the contract will result in more expeditious processing of requests for such copies.

In addition, the act was amended in 1959 to eliminate the Comptroller General's responsibility for fixing dates on which the period of limitation for filing suits against Miller Act payment bonds commences to run. This amendment provided that suit must be commenced within 1 year after the date on which the last of the labor was performed or material was supplied by the person initiating the lawsuit. Act of August 4, 1959, Public Law No. 85–24, 73 Stat. 279. Since the Miller Act no longer requires the Comptroller General to determine and certify the final settlement date of contracts, we believe the Comptroller General should be relieved of the concomitant duty of furnishing certified copies of bonds and contracts.

For the above reasons, we recommend that the bill receive favorable consideration.

Sincerely yours,

ROBERT F. KELLER,
Deputy Comptroller General
of the United States.

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